

REMARKS

Claims 1, 2, 5-12, 15-22, 25-27 and 30 are pending in the present application.

Claims 1, 2, 5-12, 15-22, 25-27 and 30 are rejected.

Claims 1, 11, 21 and 26 were amended.

Reconsideration of the claims is respectfully requested.

The Applicants make the aforementioned amendments and subsequent arguments to place this application in condition for allowance. Alternatively, the Applicants make these amendments and offers these arguments to properly frame the issues for appeal.

The Applicants have made the arguments set forth above in order to place this Application in condition for allowance. In the alternative, the Applicants have made the amendments and arguments to properly frame the issues for appeal. In this Response, the Applicants make no admission concerning any now moot rejection or objection, and affirmatively deny any position, statement or averment of the Examiner that was not specifically addressed herein.

I. CLAIM REJECTION UNDER 35 U.S.C. § 103

Claims 1, 2, 5-12, 15-22, 25-27 and 30 were rejected under 35U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,687,901 to *Imamatsu*, (hereinafter “Imamatsu”) in view of U.S. Patent No. 6,928,579 to *Äijä*, hereinafter “Äijä”. The Applicants respectfully traverse the rejection.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142, p. 2100-125 (8th ed. rev. 5, August 2006). Absent such a *prima facie* case, the Applicants are under no obligation to produce evidence of nonobviousness. *Id.* To establish a *prima facie* case of obviousness, three basic criteria must be met: *Id.* First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *Id.* Second, there must be a reasonable expectation of success. *Id.* Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicants’ disclosure. *Id.*

Amended Independent Claim 1 comprises unique and novel elements, including those emphasized below:

A wireless communication device capable of downloading a software update file from a wireless network, said wireless communication device comprising:

a non-volatile memory capable of being re-programmed by sectors, wherein said non-volatile memory stores: 1) a target file to be updated, 2) said downloaded software update file, and 3) a journal

comprising a plurality of entries, each of said plurality of entries containing status information associated with a re-programmed sector of said non-volatile memory;

a random access memory; and

a main processor capable of replacing target code in said target file with replacement code from said downloaded software update file, wherein said main processor creates a first block of replacement code in said random access memory and re-programs a first target sector of said non-volatile memory by storing said first block of replacement code into said first target sector, and wherein said main processor updates first status information in a first entry in said journal associated with said first target sector, and wherein said main processor is further capable of storing first target code from said first target sector in a save-area of said non-volatile memory prior to storing said first block of replacement code into said first target sector and said first status information comprises a second parameter indicating that said first target code from said first target sector was successfully stored in said save-area of said non-volatile memory, wherein the journal further comprises information sufficient for a recovery of an error during the replacing of the target code with replacement code through two independently erasable sectors and the save-area sector of non-volatile memory, wherein the journal is configured to be used also in a recovery of an error during the download of the software update file from the wireless network, *and wherein upon the an error occurring during the download of the software update file, the journal is used to resume the operation of the download of the software update file from the wireless network at the next sequential sector following the last successfully downloaded and saved sector.* [Emphasis Added]

The support for the amendments to the independent claims is found throughout the specification, as filed, including [0053].

Independent Claim 1 has been amended to recite that the journal is configured to be used also in a recovery of an error during the download of the software update file from the wireless network,

specifically to allow the resumption of a transfer at the next sequential sector. This feature is not found in Imamatsu or Äijä. The Office Action suggests that the version management domain 42 in Imamatsu teaches a journal. However, it is clear from Figures 7-9 and columns 8, 11 and 12 of Imamatsu that the flags of the version management domain 42 are only updated during the software updating process (Figure 9). There is nothing in Imamatsu that teaches or suggests that the version management domain 42 is used or updated during the software download process shown in Figures 7 and 8. Since the version management domain 42 is not updated during the software download process, it certainly could not be used in the recovery of an error during the software download process. Thus, Imamatsu fails to teach this feature of Claim 1. Äijä fails to correct the deficiency of Imamatsu.

As such, independent Claim 1 is patentable over Imamatsu or Äijä, both separately and in combination. Independent Claims 11, 21 and 26 recite features analogous to those features emphasized in traversing the rejection of Claim 1 and, therefore, are also patentable over the cited references. Claims 2 and 5-10 depend from Claim 1, Claims 12 and 15-20 depend from Claim 11, Claims 22 and 25 depend from Claim 21, and Claims 27 and 30 depend from Claim 26. These claims are patentable at a minimum due to their dependence from allowable base claims.

Accordingly, the Applicants respectfully request the Examiner to withdraw the § 103 rejection with respect to these claims.

CONCLUSION

As a result of the foregoing, the Applicants assert that the remaining claims in the Application are in condition for allowance, and respectfully requests that this Application be passed to issue.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at *jmockler@munckcarter.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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